IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-1-2005

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRL.R.C.No.1922 of 2004

Data Processors Welfare Association
Rep. by its President
N.Sundaravadivelu
No.14, R.V.Koil Street
Jothipuram
Coimbatore 641 047. .. Petitioner

vs

1. State by:
   Inspector of Police
   City Crime Branch
   Coimbatore City

2. Arun Chinnasamy @ A.Chinnasamy
   Chairman and Managing Director
   of ATM Info Tech
   683, Trichy Road
   Coimbatore 641 005.
   (Singanallur P.S.Cr.No.39/2002) .. Respondents

This criminal revision case is preferred under Sections 397 and 401 of the Code of Criminal Procedure against the order passed by the Judicial Magistrate No.III, Coimbatore, in C.M.P.No.7215/2003 dated 5.9.2003.

For Petitioner : Mr.R.N.Amarnath

For Respondents : Mr.A.N.Thambidurai
Government Advocate(Crl. Side)
for R1

Mr.M.Mayakrishnan for R2

ORDER

An order passed by the learned Judicial Magistrate No.III, Coimbatore, dismissing an application filed by the petitioner herein seeking for return of the amount with interest totalling to Rs.4,92,00,000/- by releasing the freezing order issued by the first respondent to the Bank concerned and also the money available in the lower Court to the credit of Crime No.39/2002 of Singanallur Police Station, is under challenge.

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2. The petitioner filed the said petition before the lower Court alleging that the members of the petitioner association approached the second respondent, entered into MOU with them and paid Rs.4,92,00,000/-; that pursuant to a case registered by Singanallur Police Station in Crime No.39 of 2002 under Sections 120b, 465, 468, 471 and 420 I.P.C., various documents and amounts due to the second respondent were collected by the police and were deposited before the lower Court; that the amount so deposited, was to the tune of Rs.4,92,00,000/-; that the first respondent had promised to settle the amount due to the complainants within three months from the date of registration of the case; but, no progress has been shown; that the creditors of the petitioner association were pressurizing them to return the debt amount, and under the circumstances, the amount has got to be returned to them. A counter was filed by the first respondent police. On enquiry, the lower Court dismissed the application. Hence, this revision case.

3. The learned Counsel for the petitioner would submit that franchise fee amount paid by the members of the petitioner association was their hard earned money and also borrowed from others at heavy interest; that they are unable to bear the heavy pressure of the creditors, and under the circumstances, an official receiver has got to be appointed to calculate the entire amount and divide the same equally among the claimants.

4. The first respondent has filed a report along with annexures. Heard the learned Government Advocate for the first respondent and the learned Counsel for the second respondent also on the above contentions.

5. As could be seen above, a case came to be registered by B5 Singanallur Police Station in Crime No.39 of 2002 under Sections 120(B), 465, 468, 471, 420 and 109 of I.P.C., and on completion of the investigation, the final report was also filed. The report filed by the investigating agency before this Court would reveal that there were totally 2747 depositors; that the total amount of deposit was Rs.16,69,36,150/-; that the amount paid to the franchisees through bank was Rs.8,76,27,885/- and through vouchers was Rs.1,83,67,530/-, and thus, a sum of Rs.11,25,81,515/- has already been refunded. From the written submissions made on both sides, it could be seen that totally a sum of Rs.5,44,04,639/- has to be refunded to the remaining depositors. Admittedly, 2747 depositors have deposited their hard earned money and also borrowed from others for interest, and thus, they are also answerable to their creditors. Needless to say that there are hundreds of witnesses to be examined during trial, which would take a long time. In such circumstances, pending the proceedings if the amounts originally deposited in the Court and now available in the hands of the bank to the credit of the said Crime Number, are disbursed to the depositors, it would not in any way cause prejudice to the prosecution case. To this course, the prosecution has no objection. Hence, this Court is of the considered opinion that

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early disbursement of the deposit amounts is warranted by the reasons and circumstances, recorded above.

6. The report submitted by the prosecution contains three annexures. It is not in dispute that a sum of Rs.4,92,88,566.68 is available in various banks with interest as on 18.1.2005, as found in Annexure II attached to the report filed by the first respondent. Annexures I and III attached to the said report contain list of articles seized and assets in stock exchange building, which were not seized. The second respondent filed an affidavit stating that the said amount of Rs.4,92,88,566.68 in the hands of the banks can be paid to the depositors. It is seen that apart from the said amount of the second respondent, available with the bank, in order to satisfy the rest of the depositors, a sum of Rs.52,04,635/- is required. At this juncture, the learned Counsel for the second respondent would submit that the movable properties found in the Annexures could be sold in auction in order to satisfy the entire claim of the depositors.

7.Under the stated circumstances, it has become necessary to appoint a receiver to distribute the amounts of the second respondent now available in various banks to the depositors who are really eligible and entitled to get back their money, and to sell the movable properties belonging to the second respondent institution by public auction if necessary and if any deficiency is found in satisfying the depositors.

8. Therefore, the order of the lower Court is set aside. A receiver for the said purpose is appointed as hereunder. Justice A.Ramamurthi, retired Judge of this Court, is appointed as a Receiver, who is required to cause a notice calling for the applications from the depositors, verify deposit vouchers and documents and distribute the respective amounts on proper acknowledgement, from out of the amounts of the second respondent available in the banks. The Receiver is also empowered to conduct sale of the movable properties found in the annexures by public auction and utilise the sale proceeds for meeting the demands of the depositors, if necessary. The Receiver's initial remuneration is fixed tentatively at Rs.25,000/- (Rupees twenty five thousand only) per month. The Receiver is entitled for his conveyance and other expenses. The Receiver's total remuneration would be fixed at the time of filing of the report, taking into consideration of the work done.

9. On the suggestion of the second respondent management, Mr.C.Krishnan, Senior Counsel, assisted by Mr.M.Mayakrishnan and Mr.Satish Rajan, Advocates, are authorised and on the side of the petitioner association, Mr.R.N.Amarnath and Mr.Javid Khan, Advocates, are authorised to assist the Receiver in performing his duties. However, it is made clear that except assisting the receiver in performing his duties, they have no other functions to perform.

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10. This criminal revision case is disposed of accordingly.

19-1-2005

hsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. Justice A.Ramamurthi [Retd. Judge]
Receiver, Tamil nadu Housing Board,
Plot No.9 Nolampur, Phase-II,
Mogaipare West,
Chennai-602 102.

2. The Judicial Magistrate No.III,
Coimbatore

3. The Public Prosecutor
High Court, Madras.

4. The Judicial Magistrate No.III
Coimbatore. Thro' The Chief Judicial Magistrate
Coimbatore.

5. The Inspector of Police,
City Crime Branch,
Coimbatore City.

3 ccs to Mr.S.Sathish Rajan, Advocate, SR.2035

jsk (co)
dv/MK

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